

JANUARY 31, 1766.

MEMORIAL

FOR

*Andrew Johnston of Ranniehill, and Charles Robb,
Baillies of the Burgh of Easter Anstruther, and
others, Respondents,*

AGAINST

*Alexander Young, and others, Counsellors of the
said Burgh, Complainers.*



THE said *Alexander Young*, and others, having thought proper to exhibite a Complaint to your Lordships, upon the Statute of the 16th of his late Majesty, setting forth various undue Practices, which they alledged had been followed in bringing about the last *Michaelmas* Elections of this Burgh, and which they therefore pray to have reduced. The Memorialists being served with this Complaint, made Answers thereto, founded, *imo*, on an obvious Nullity in the said Complaint, *viz.* that the whole Council, the legal Representatives of the Burgh, were not made Parties thereto, in respect that *George Brown*, one of the Counsellors elected at *Michaelmas*, was neither mentioned in the Complaint, nor any Warrant granted by your Lordships for serving the same upon him. *2do*, The Memorialists, that they might not seem to rest their Defence singly upon a legal Objection of this sort, although they apprehended it to be clearly fatal to the Complaint,

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endeavoured to give a fair and true Account of the Facts which had occurred in said Election, and to show that the same were grossly misrepresented in this Complaint, which had been wantonly and injuriously given in against them.

To these Answers, Replies were made in behalf of the Complainers ; and your Lordships, on the 15th current, pronounced the following Interlocutor : “ Having considered
“ this Petition and Complaint, with the Answers thereto,
“ and Replies to the Answers, before Answer ordain Memo-
“ rials, *hinc inde*, to be given in against the 31st Day of
“ *January* current, on the Objection to the Competency of
“ this Complaint, founded upon a Mistake in the Name of
“ one of the Counsellors, in the Complaint, &c.”

In obedience to this Interlocutor, what follows is humbly offered on the Part of the Respondents.

The Fact, with regard to the Objection here pleaded, is shortly this : The Complaint contains a List of the Magistrates and Counsellors of this Burgh, said to have been elected at *Michaelmas* last, and prays for an Order of Court for serving the same upon the particular Persons whose Names are recited in the said List, and in the Prayer of the Petition, as those who behoved to be made Parties in the present Action. Amongst others therein named, is *Thomas Brown Wright*, said to be a Counsellor of this Burgh ; and the Warrant thereupon granted did accordingly give Authority for citing *the whole Persons above complained on*, and ordained them to give in Answers thereto, within the Time limited by Law.

Upon a more strict Enquiry, it seems, the Complainers discovered, that they had committed a gross Blunder in reciting the Names of the Counsellors, in respect that, although there is such a Person as *Thomas Brown Glasier*, who still lives in this Town, and who was formerly a Counsellor, yet he is not now a Counsellor ; and that *George Brown Wright*, who is at present a Counsellor, was the Person whom they
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should have mentioned, and against whom the Warrant should have been granted.

In order to correct this Mistake, the Complainers thought proper to take a very extraordinary Step, and fairly used the Freedom to assume your Lordships Powers, and *granted Warrant* to the Messenger whom they employed, to cite the Person whom they should have named, *viz. George Brown*, instead of *Thomas Brown*. The Messenger's Execution in Process recites particularly the Complaint, and the Act and Warrant of your Lordships thereon, with the Names of the Persons therein contained, and sets forth, that, *in virtue thereof*, he had lawfully cited the Persons therein named, particularly, *George Brown Wright in Anstruther Easter*, who (he is pleased to add) had been named *Thomas*, by Mistake, in the foresaid Petition and Complaint, and Act and Warrant; and charges those Persons to compear before your Lordships, and to give in Answers to the Complaint exhibited against them.

What Censure your Lordships may think proper to inflict upon the Messenger who has thus taken upon him to exceed the Power given him by your Lordships Warrant, the Respondents will not presume to say. But what they are now humbly to maintain is, that, under Colour of Law, he has done a Thing altogether irregular and unprecedented; that he has clearly exceeded his Authority; and that *George Brown*, the real Counsellor of this Burgh, has not been properly made a Party to this Action, and that therefore the Objection to this Complaint is good, that all Parties having Interest are not called.

The Respondents apprehend, that nothing can be more settled, in Point of Law, than this, that it is absolutely necessary, that every individual Magistrate and Counsellor elected should be made Parties, either as Pursuers or Defenders, to any Complaint brought for reducing their Election. The Interest of the Burgh is deeply at stake, in every such
Question;

Question ; because the direct Tendency of such Action is, to forfeit them of their Franchise and legal Powers as a Corporation, and to reduce them to a State of Anarchy. Every Magistrate, and every Counsellor, must be regularly sifted as Parties, because the whole of them together, in one united Body, and not any Number or Part of them, form the legal Representation of the Burgh, and it is their Duty, as well as Interest, to defend the Community whom they represent. Every particular Member of Council is likewise interested, on his own Account, to defend and support his own Election; so that both publick and private Interest make it indispensibly requisite that he should be called ; and this has been so often decided, that it cannot admit of a Dispute.

If therefore it shall appear evident to your Lordships, in this Case, that the Name of one of the Counsellors of this Burgh has been omitted in the present Complaint, and Warrant granted thereon, and that the Complainers have, by this Mistake, put it out of their power to rectify this Omission, and to call the whole Representatives of the Burgh in a proper Manner, within the Time prescribed by Law, the Consequence must necessarily be, that this Error must prove fatal to the Complaint, and that the same must fall to the Ground.

The Citation given, in this Case, to the said *George Brown*, one of the Counsellors, the Respondents do, with Submission, apprehend to be no better than if he had not been cited at all, for this plain Reason, that a Citation given, without proper Authority, or a legal Warrant, is not only inept and absurd, but is, in effect, rather a Contempt of Law. The Rules and Forms which are useful and necessary, in the Administration of Justice, and which the Use of Courts of Justice has introduced into civilized Society, have long ago exploded such barbarous Customs as that practised in old *Rome*, *Rapere in jus obtorto collo*, without any Application to, or Authority from, a lawful Magistrate or Judge. Ever since Summonses, or Warrants for Citation, were introduced at
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the Institution of the College of Justice, no Person is bound to answer in any Action before the Court, unless properly called by a legal Warrant, agreeable to the Forms prescribed, either passing under the King's Signet, or by the immediate Authority and Order of the Court. Whichever of these Methods the Nature of the Action shall make necessary, still there must be a special Warrant to empower the Messenger, or Officer of the Law, to call any Party into Court, to answer to the Claim or Action brought against him. The Officer is no more than the Hand made use of by the Judge, who devolves his Authority upon him for that particular Purpose ; nor has he any Power whatever, but what he derives from that Authority. If therefore he counteracts, or exceeds, that Power, what he does is void ; it can have no Effect, and may safely be disregarded, because the Court will give no Countenance or Support to what has no Foundation in Law, or in the Rules of judicial Procedure.

It is unnecessary to mention particularly the various Regulations which have been anxiously made, from time to time, to bring these Forms of Executions to Accuracy and Precision, as they are all well known to your Lordships. The Act 1672 has, in express Terms, ordained, " That, in time coming, all Executions of Summons shall bear expressly the Names and Designations of the Parties, Pursuers and Defenders ; and that it shall not be sufficient, that the same do relate generally to the Summons, otherways the Execution shall not be sustained." The Anxiety which the Law has here shown, in prohibiting this general Reference, and requiring, that every Name and Designation of a Party contained in the Warrant, shall be specially ingrossed in the Execution thereof, proves clearly how essential it has been thought, that all Executions should be exactly conform to their Warrants, and that no Latitude is to be allowed to these under Officers of the Law, as to the Method of bringing Parties regularly before the Court.

The Execution in question, is so far from containing the Names and Designations of the Parties mentioned in your Lordships Warrant, or even referring to it in general, that, on the contrary, it boldly disregards the same, and the Messenger without Scruple avows, that he had cited one Person, while, at the same time, he confesses, that your Lordships had ordered him to cite another; and takes upon him to judge of the Intention of Parties, and determines, that by *Thomas* was certainly meant *George*. He might, by the same Rule, have gone a Step further, and, had the Name in the Complaint and Warrant been *Thomas Watson*, he might have found out that it was a Mistake, and that *George Brown* was the Person truly intended. Nay, had every Name and Designation in the Complaint been wrong, he might have rectified the whole, and with equal Propriety have corrected the grossest Blunders that could have been committed.

It would require a good deal of Eloquence to convince one, that *Thomas Brown* and *George Brown* were the same Person; or that, by the Name of *Thomas*, *George* was necessarily meant. The Respondents neither know, nor are they bound to enquire into the Intentions of the Complainers: Possibly this Mistake has been industriously made, in order to cut short a groundless Complaint, and prevent higher Costs from being awarded on the Issue of a Proof, in which they despaired of Success. But, whatever were their Views, it is sufficient to say, their Complaint is defective; that the Warrant founded upon it is also so; and, that it is impossible that the Execution of the Messenger could, without any Authority, supply a clear and essential Defect in both.

The Clause in the Act of Parliament, on which this Complaint is founded, enacts, That upon a Complaint of Wrongs, done in any Election, being presented to your Lordships within two Kalendar Months after such Election, "The Court shall thereupon grant a Warrant for summoning the Magistrates and Counsellors elected by the Majority, &c."

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If the Complainers could maintain, that *Thomas Brown* was one of the Magistrates or Counsellors elected by the Majority, their Complaint would have been well founded in that respect, and your Lordships Warrant proceeding thereon, would have been a proper Authority, in terms of the Statute, for citing him, and the other Persons therein named. But, as it cannot be pretended, that the said *Thomas Brown* was among the Number of those elected by the Majority, or, as it is expressed in the Complaint, *pretended* to be a Counsellor of this Burgh, the Warrant obtained by the Complainers is evidently and substantially erroneous, and the Requisites of the Statute are not complied with. On the contrary, one of the Persons really elected by the Majority, is omitted in the Warrant, which alone could authorize his being brought into Court; and this Omission is not now suppliable, on account of the Lapse of the Time prescribed by Law.

By a preceeding Clause in the same Statute, it is enacted,
 “ That if any Person shall be inrolled in the Roll of Free-
 “ holders, whose Titles shall be thought liable to Objection,
 “ it shall and may be lawful, for any Freeholder standing
 “ upon the said Roll, (whether such Freeholder was present
 “ at the Meeting or not) who apprehends that such Person
 “ had not a Right to be inrolled, to apply in like Manner by
 “ Complaint to the Court of Session, so as such Application
 “ be made within four Kalendar Months after such Inrol-
 “ ment; and the said Court, after Service of such Complaint,
 “ on thirty Days Notice, upon the Person said to be wrong-
 “ fully admitted to the Roll, shall hear and determine, &c.”

Now, let it be supposed, for the sake of Illustration, that the Counsellor above named had been inrolled at the last *Michaelmas* Meeting for the County of *Fife*, under the Name and Designation of *George Brown* of *Anstruther-Easter*, and that some Freeholder, who imagined his Title was not good, had presented a Complaint to your Lordships, founded upon the above Clause, setting forth, that *Thomas Brown* of *Anstruther-Easter*,

Easter, had been wrongfully admitted on the Roll, and praying a Warrant for serving the Complaint upon the said *Thomas Brown*, *nominatim*, and that your Lordships had of course granted such Warrant, the Respondents would beg leave to ask, whether this Complaint could legally be served upon *George Brown*, the Person truly admitted to the Roll; or if the Messenger could be justified in such Case, for citing a Person not named in your Lordships Warrant; or if *George Brown* could at all be obliged to answer upon such Citation? The Respondents apprehend it would be impossible to maintain so strange a Doctrine, which would sanctify every Mistake that could be committed, and at once destroy that Formality and Accuracy, so essential in Questions of this Nature.

The Case now put, has indeed been expressly decided by your Lordships, in the very Way contended for by the Respondents, in the Case of *Dickson* against *Gibson*, collected by *Falconer*, 13th February 1745; and as the Case is so extremely similar to the present, that even the very Names coincide, the Respondents will take the liberty of transcribing it, as it is shortly collected.

George Gibson of *Boreland* standing on the Roll of Freeholders for the Shire of *Tweeddale*, a Complaint was given in against *Thomas Gibson* of *Boreland*, which being ordered to be served, an Execution was returned also against *Thomas*.

Answers were given in in the Name of *Thomas Gibson*, younger of *Boreland*, setting forth, that he was not in the Roll, nor claimed to be, during his Father's Life.

The Complaint, on seeing the Mistake, was executed against *George*, and coming to be insisted in, the Lord Ordinary, 11th January 1745, on Advice with the Lords, found,
 “ That *Thomas Gibson* of *Boreland* did not stand on the Roll
 “ of Freeholders for the Shire of *Tweeddale*; and found, that
 “ *George Gibson*, the Father, not being contained in the Complaint, the Complainers could not be heard to object to
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" the said *George*, why he ought not to stand on the Roll of
 " Freeholders."

A Petition was presented, which was ordered to be answered by *George*, and Answers were given in thereto in the Name of the Father and Son.

Pled for the Petitioner: It was only a *Misnomer*, and seeing *constabat de persona*, it were unjust, on this Pretence, to continue on the Roll, a Person who had no Right to be there.

Answered: It was more than a *Misnomer*; a wrong Person had been complained upon; a wrong Person summoned; and it was now past time to complain against *George* the Father, after the Lapse of Time prefixed by the Statute: That the second Execution was without a Warrant, the Order of the Court being to cite *Thomas*, against whom the Complaint was.—The Lords adhered.

No Case can possibly occur more exactly like the present, than the above. A wrong Person has here been complained on; the Warrant has been directed against a wrong Person; and the Execution has been without a Warrant, as being against a Person not contained in it. The Respondents, therefore, humbly hope, your Lordships will have no Difficulty in giving the same Judgment.

The Respondents have also been informed, that a like Decision was given in 1743, in the Case of the Town of *Paijley*, which, till very lately, voted by a Delegate among the Freeholders of the Shire of *Renfrew*: A Complaint was offered against them in 1743, which was cast, upon the very Mistake and Objection now made. But the Particulars of the Case, or the Interlocutor of the Court, have not been found.

If the Analogy of other Cases decided by the Court, or the Decisions of Law in other Countries, are attended to, they will be found to fortify strongly the Arguments used for the Respondents.

In the Case of a Prisoner escaping through the Fault or Neglect of Magistrates of a Burgh, it has been often found, that one of the Magistrates could not be conveyed for Damages, except the whole Magistrates were specially called, because they are only liable as an united Body, unless they can condescend on the particular Magistrate in fault. Now, suppose an Action of this Kind is brought against Magistrates, and that one of them is cited by the Name of *James*, instead of *John*; or, that both his Christian and Surname should be mistaken, could it be maintained, that by such Citation they would be legally conveyed in an Action of Damages? It seems clear they would not; and every Person among them would have a Right and Interest to insist, that all Parties were not called. The same Plea would likewise be competent to the Representatives of every Body-corporate, who might be pursued upon a Delinquency, or where the united Body, as well as the Individuals, were concerned. In Actions which are in any Shape penal, this must particularly hold, for Reasons that are obvious: Every Person to be conveyed, has an Interest to defend himself and the others, and a Right to insist, that all of them shall be made Parties for that Purpose, because it may often occur, that the very Persons omitted might be best able to furnish the Means of Defence: If, therefore, any of them are not cited; or, which is the same thing, are cited without a Warrant, or by a wrong Name or Designation, it can never be said, that all Parties having Interest are called, and, of course, the Process must fall. Nor would your Lordships admit such erroneous Executions to be amended, after being once made out, and signed by the Messenger and Witnesses.

Even in the Case of an ordinary Summons in a civil Action, the Respondents apprehend, that a Person inserted in the Summons by a wrong Name or Designation, and cited either conform or disagreeably thereto, would not be obliged to answer on such Citation. If the Citation is disconform

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to the Summons, he might insist that it was void, as being without a Warrant: If it was conformable to it, he might safely plead, that he was not the Person therein described, or might disregard it altogether. And although such Defect may perhaps be sometimes suffered to be amended by Consent of Parties, when the Objection serves little other Purpose than to delay the Cause, and to occasion only a new Summons to be raised, yet Cases may, and do often occur, where it may be of very great Importance to the Interest of Parties, and where such Objection may be fatal and decisive against the Pursuer's Claim. The general Rule, therefore, is just; because, if once it is departed from, there is no knowing where to stop.

The same Rule must also take place, with regard to the Execution of legal Diligence of every kind. Let us suppose, for Example, that a Horning was raised and executed against a Person, who by Mistake is called *Thomas Brown*, would any Writer venture to take upon him, under Pretence that this was but a simple Error in the Name, to raise, or cause execute a Caption against *George Brown*, the real Debtor in the Obligation?

Upon the same Principle it has been frequently decided, that where the Witnesses to the Subscription of a Deed are inserted by wrong Names or Designations, such Deed is held to be null, though the Defect might with Certainty be supplied, by condescending on the real Persons or Names, and it might be evident, that the Mistake was entirely owing to a little Inaccuracy in the Writer.—Thus, in a Case observed by *Forbes*, 15th July 1717, *Abercrombie contra Innes*. An Assignment, which was the Pursuer's Title, being quarrelled as null, in regard *Robert Farquharson* was inserted as one of the Witnesses, whereas it appeared, that the Deed was subscribed by *John Farquharson*, which was truly his Name. The Pursuer, as the Complainers do now, pleaded, "That the Error, by inserting *Robert* for *John*, ought not to prejudice
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“ the Pursuer, *ubi constat de persona*, and the Mistake was evident.” To which the Defender answered, “ How can it be alledged, with any Countenance, that *Robert* is *John*? and that the *jus quæsitum*, through the Nullity of this Conveyance, could not be taken away from the Parties interested.” The Lords unanimously sustained the Nullity, and declared they would decide so in all time coming.

That the Plea here insisted on for the Respondents, is known and sustained in the Practice of other Countries, is clear from the *Roman* Law, as laid down by *Voet*, in the Title, *De in jus vocando*, § 14. “ *Contra vero, si quid ex observandis in in jus vocatione neglectum sit, dum vel in forma peccatum, vel nimis coarctato, vel nimis protelato sistendi tempore, vel in nomine et designatione actoris aut rei, aut judicis erratum est, nullius momenti foret vocatio, nec ex ea reus, sui copiam non faciens, contumax aut morator dicendus esset, ac nihil valerent, quæcunque ad talem inutilem vocationem fuissent subsecuta, non magis, quam si in jus vocatio in universum defuisset.*” And, in support of this Doctrine, he cites the Authority of several Lawyers of other Countries, where the above Rules have been adopted.

In the Law of *England*, the Doctrine of *Misnomer* is fully treated by all their Writers, and the Rule here contended for is firmly established. Thus *Bacon*, in his Abridgment, Voce *Misnomer*, says, “ If the Christian Name be wholly mistaken, this is regularly fatal to all legal Instruments, as well Declarations and Pleadings, as Grants and Obligations.” To the same Purpose *Jacob*, in his Law Dictionary, under the same Word: “ Where a Christian Name is quite mistaken, as *John* for *Thomas*, &c. it may be pleaded, that there is no such Man *in rerum natura*; and quotes for this *Dyer's Reports*, Page 349.” And there are a Number of Cases to be found in *Salkeld*, *Popham*, and *Lilly's Reports*, where the same thing has been adjudged, and in which it is laid

laid down as fixed Law, "that the Christian Name ought always to be perfect." Nay, so strict are they as to this Matter, that a Mistake of this Kind cannot be rectified, after the Case is brought into Court.

In criminal Cases, it is perfectly clear, that a Mistake in the Name, such as the present, would infallibly be fatal to an Indictment, either by the *English* Law, or by the Law of this Country. *Hale*, in his *Pleas of the Crown*, Vol. II. Page 175, lays it down in express Words: "The Mistake of the Christian Name is pleadable, as well in case of an Indictment as an Appeal, and the Party shall be dismissed from that Indictment." And agreeably thereto your Lordships know it has frequently been decided, both here and in the House of Peers; particularly in the Cases of General *Gordon*, of *Alexander Farquharson*, and of Lord *Pitligo*. In all these Cases, it was held and admitted as undoubted Law, that the Objects of a penal Act ought to be described precisely by their proper Names; so that one Man may be in no danger of suffering for the Act or Default of another, and where a Description of any Person is *totally repugnant to Truth*, by giving him a Name or Designation which truly did not belong to him, such Description was held to be false, and no Execution could be awarded thereon, although there could not be the least Doubt who was the Person thereby intended.

The Respondents will not say, that the Act of the 16th of the late King, on which the present Question occurs, is a penal Act, though, at the same time, they may justly say, it is highly penal in its Consequences, the direct Purpose of the Action, here brought upon it, being to obtain a Forfeiture of the most important Rights, not only against the Community, but against the individual Members of Council, and to have each of them found liable in very high Costs to the Complainers. But further, the Complaint is here laid also upon the other Act of the 2d of his late Majesty, for preventing Bribery and Corruption. By this Statute,

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the Offences charged in this Complaint against the Respondents, do expressly infer Forfeitures, Fines, and Incapacities of the deepest Nature ; and, with the strictest Propriety it may be said to be a penal Act, and therefore, according to the established Rules of Law, founded on Humanity, and the Principles of Justice, it must receive a strict Interpretation, and be construed as favourably and benignly for those accused, as can with Reason be admitted.

The Law has, upon the most just Considerations, expressly limited the Time, within which a summary Complaint for Wrongs alledged to be done at an Election, shall be competent, to a certain Period ; and has, in express Words, required, that the whole Magistrates and Counsellors, elected by the Majority, shall be cited in such Action. If therefore the Complaint is delayed beyond the Time prescribed, or if it is executed in an informal or irregular Manner, so as all Parties having Interest, shall not be called within the Time limited, in such Case this extraordinary Remedy, introduced by express Statute, can no longer be made use of, the Action is for ever cut off, and a *jus quæsitum* of an Immunity from Challenge, on this Act, accrues to the Community, and to every individual Member who could have been called as Defenders in the Action. It is a sort of Prescription which is introduced by the Statute ; and the Limitations therein enacted are not only strictly legal, but in themselves highly favourable. Every Person, therefore, among the Respondents, is intitled to lay hold of the Defect here pleaded, and to insist, that no Procedure can be had against him, in an Action so highly penal, where the Requisites of the Statute have not been complied with. The Respondents know well, that the Election complained of was not brought about by the Means falsely alledged by the Complainers, and that the Issue of a Proof would only be to dismiss the Complaint with severe Costs. But they do not think themselves bound, at present, to enter into that Question. It is sufficient for them to say,
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that this Action has not been properly brought ; that all Parties, having Interest, are not called ; that one of the Members of Council has not been properly cited ; and that this Mistake must be fatal to the Complaint.

The only Argument made use of by the Complainers, in answer to this Objection, is, " That this is an innocent and " immaterial Mistake, since, from the Designation of *Coun-* " *fellow*, which is added, *certissime constat de persona* ; and Ser- " vice has been actually made upon the only Person who " could be meant."

But without insisting further on the apparent Absurdity above mentioned, of maintaining, that by *Thomas, George* must certainly and necessarily have been meant ; the Respondents beg leave to say, that what is here contended for, is no more than what must occur, and may, with equal Propriety, be pleaded in every Case of this Nature; let the Mistake be ever so gross. Had the Complainers cited a Person with a Name, Surname, and Occupation, entirely different, yet still, if the Argument is good, the Designation of *Coun-* *fellow* would have been sufficient to rectify the whole, and to point out the Person whom they are pleased to say they intended. Had they even mistaken every Name and Designation in the Magistracy and Council, the magical Power of this Word *Counfellow*, would, by the same Rule, have turned them all into proper Names and Designations, and made Persons entirely different from those named; legal Parties and Defenders in this Action. This is what never could have been listened to, and must have appeared evidently ludicrous. The Complainers, in this Case, have not even allowed those whom they have cited, the Honour of describing them by the legal Designation of *Counfellors* ; they invidiously and affectedly call them only *pretended Counfellors* ; how *Thomas Brown*, pretended Counfellow, should come to be necessarily the same with *George Brown*, a real Counfellow of this Burgh, is humbly submitted.

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The Use of Names and Designations is certainly to distinguish one Person from another ; wherever they are mistaken or confounded, nothing but Uncertainty can ensue ; which is least of all to be permitted in judicial Proceedings, especially where important and penal Consequences demand the utmost Precision.

The Respondents shall conclude with observing, that what is alledged in the Replies for the Complainers, *viz.* That the Error here fallen into has been owing to the Fault of the Respondents, in wrongfully with-holding from the Complainers, the Extract of the Minutes of Election, till very lately, is absolutely false, and without Foundation. If any Wrong had been done in this Matter, the Respondents are not chargeable with it. It was the Duty of the Clerk to give an Extract, and he had no Directions whatever from the Magistrates or Council to refuse it ; neither, in fact, was it ever refused, or even delayed to be given. The Complainers do not so much as alledge, that they ever made the Demand, and were refused ; nor have they produced any Evidence thereof, or Protest taken by them against the Clerk for his Refusal ; and the Respondents are informed, the Extract was given immediately upon its being asked ; so that it was highly improper to make so groundless an Accusation.

Upon the whole, the Respondents humbly hope, your Lordships will have no Difficulty in sustaining the Objection here made, and in dismissing this Complaint with Costs.

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